

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA,)
)
)
) CAUSE NO.: 2:13-CR-48-JTM-PRC
v.)
)
JOSEPH JAMAL SMITH,)
)
 Defendant.)

**FINDINGS AND RECOMMENDATION OF THE MAGISTRATE JUDGE
UPON A SUPERVISED RELEASE REVOCATION HEARING**

TO: THE HONORABLE JAMES T. MOODY,
UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA

On December 12, 2016, the United States Government appeared by counsel Assistant United States Attorney Thomas McGrath. Defendant Joseph Jamal Smith appeared in person and by counsel Federal Community Defender Jerome Flynn and in the custody of the United States Marshal. United States Probation Officer Mark Kroft appeared.

Supervised Release Revocation Hearing was held. The Court received evidence and comments.

Based upon the record of proceedings the Court makes this Report and Recommendation.

On May 21, 2013 the Defendant Joseph Jamal Smith pled guilty to the Count I charge in the Indictment (Felon In Possession Of A Firearm).

On August 22, 2013, Judge James T. Moody originally sentenced the Defendant Joseph J. Smith to, among other things, 24 months of supervised release subject to specified written terms and conditions.

On March 3, 2015, and May 26, 2015, the Government filed Petitions alleging that the Defendant violated the terms and conditions of his supervised release. On those two dates arrest

warrants were issued. On March 11, 2016, and May 23, 2016, the Defendant Joseph J. Smith was arrested.

On March 11, 2016, and November 14, 2016 the Initial Appearances were held.

On November 21, 2016, the U.S. Probation Office filed a Summary Report of Violations. (Docket entry 53).

On December 5, 2016, the Defendant Joseph J. Smith, by counsel, filed a Motion to Transfer Case to Magistrate Judge, which was granted.

On December 6, 2016, the parties filed their Agreed Disposition of Probation (sic.) Violations. (Docket entry 56-1).

On December 7, 2016, Judge James Moody issued an Order Referring Case for a Report and Recommendation for the undersigned Magistrate Judge to conduct the Supervised Release Revocation Hearing, to recommend modification, revocation, or termination of the supervised release in this case, and to submit proposed findings and recommendations pursuant to 18 U.S.C. §§ 3401(i) and 3583(c) and Federal Rule of Criminal Procedure 32.1.

As a result of the December 12, 2016, Supervised Release Revocation Hearing, the undersigned Magistrate Judge **FINDS** that:

1. The Defendant Joseph J. Smith has been advised of his right to remain silent, his right to counsel, his right to be advised of the charges against him, his right to a contested Supervised Release Revocation Hearing, and his rights in connection with such a hearing;
2. The Defendant Joseph J. Smith understands the proceedings, allegations and his rights;

3. The Defendant Joseph J. Smith knowingly and voluntarily admitted that he committed each of the violations set forth on Page 2 of the Summary Report of Violations and that those allegations are true;
4. These violations are Grade B and Grade C violations, the Defendant's criminal history category is VI, the advisory guideline range is 12 to 18 months imprisonment, and the statutory maximum sentence that may be imposed is 24 months imprisonment;
5. The parties jointly agree to a sentence of the Defendant Joseph J. Smith to 12 months and 1 day of additional imprisonment with no further supervised release to follow.

The undersigned Magistrate Judge **RECOMMENDS** to Judge James Moody that:

6. The Defendant Joseph J. Smith be adjudged to have committed the violations of his supervised release described on Page 2 of the Summary Report of Violations;
7. The supervised release of the Defendant Joseph J. Smith be revoked;
8. The agreement of the parties be accepted and the Defendant Joseph J. Smith be ordered committed to the United States Bureau of Prisons forthwith to serve 12 months and 1 day of additional imprisonment therein;
9. After successful completion of the additional term of imprisonment the Defendant Joseph J. Smith not continue on supervised release;
10. The Defendant Joseph J. Smith be granted credit for time served on these supervised release revocation matters for the time period following his release from state custody into federal custody;

11. The Court recommend that the Defendant be placed in a halfway house, if available, when appropriate according to U.S. Bureau of Prisons guidelines.

WAIVER OF OBJECTION

The undersigned Magistrate Judge further **FINDS** that, at the December 12, 2016 hearing in open court, the Defendant Joseph J. Smith knowingly and voluntarily waived his 14 day right to appeal or object to this Report and Recommendation in any way pursuant to 28 U.S.C. § 636(b)(1)(B) and (C); Fed. R. Crim. P. 59(b)(2).

So ORDERED this 12th day of December, 2016.

s/ Paul R. Cherry

MAGISTRATE JUDGE PAUL R. CHERRY
UNITED STATES DISTRICT COURT